

IN THE COURT OF APPEALS OF IOWA

No. 8-467 / 97-1309
Filed November 30, 1998

IN RE THE MARRIAGE OF JAMES M. WEESE
AND SHIRLEY J. WEESE

Upon the Petition of
JAMES M. WEESE,
Appellant,

And Concerning
SHIRLEY J. WEESE,
Appellee.

Appeal from the Iowa District Court for Franklin County, Gilbert K. Bovard,
Judge.

James Weese appeals from various economic provisions of the parties'
dissolution decree. **AFFIRMED.**

Michael J. Cross of the Cross Law Firm, Hampton, for appellant.

Lynn J. Wiese of Barker, McNeal, Wiese & Holt, Iowa Falls, for appellee.

Heard by Streit, P.J., and Mahan, J., and McCartney, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

STREIT, P.J.

James Weese contends the trial court erred in awarding Shirley Weese rehabilitative alimony, one-half of a lump-sum payment he received as an accelerated pay off of an installment contract, and in requiring James to pay off the balance of the family automobile of which Shirley was given possession. Because we find alimony was warranted and the trial court's other rulings were equitable, we affirm.

I. Background Facts & Proceedings.

James and Shirley Weese were married on March 22, 1975. James adopted Shirley's children from her previous marriage and together they had one child. The children are all over eighteen. James was fifty years old at the time of trial and Shirley was forty-nine.

James has had a successful career as a physician's assistant. In 1996, his gross income was \$81,066. In 1983, James and his brother-in-law started a company called Home Health Services (HHS). From 1983-1990, James held a 37½ percent interest in HHS. In 1992, he sold his interest in HHS to his brother-in-law and sister for the sum of \$250,000. James and Shirley received \$70,000 initially, with the balance of \$180,000 payable at \$2019.58 bi-weekly. Before trial James received a lump-sum payment of approximately \$32,000 as an accelerated pay-off of the HHS contract.

Shirley was a homemaker during the marriage. She supplemented the couple's income by babysitting and working in various jobs as a nurse's aide, sales clerk, purchasing agent, and respiratory therapy trainee. She began her post-secondary

education in 1995. She received her associate degree in 1996 and at the time of trial was enrolled full time at the University of Iowa to obtain her BSN. In 1995, Shirley's gross income was \$9882. In 1996, Shirley had no income other than her alimony payments totaling \$9305.

After trial, the court divided the property of the parties. In the division, James was required to pay Shirley one-half of the accelerated lump-sum payment he received on the HHS sales contract. The court ordered James to pay the lease on the Grand Prix automobile and to exercise the option to buy the vehicle in 1998. Shirley was given possession of the vehicle. The court ordered alimony of \$1000 per month while Shirley was completing her BSN degree and for James to pay fifty percent of Shirley's hospital and medical insurance coverage. James appeals these provisions of the court's decree.

II. Standard of Review.

Dissolutions are equitable in nature and reviewed de novo. *See* Iowa R. App. P. 4. This requires an examination of the entire record to adjudicate anew the rights of the parties. *In re Marriage of Ruter*, 564 N.W.2d 849, 851 (Iowa App. 1997). Weight is given to the findings of the trial court, although they are not binding. *Id.* Iowa R. App. P. 14(f)(7).

III. Alimony.

James contends Shirley's alimony award was excessive. He argues if alimony is appropriate, she should receive only one-half the amount awarded by the trial court.

There are three types of alimony awarded by the courts. Rehabilitative alimony serves to support an economically dependent spouse through a limited period of education and retraining. *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa App. 1996). Its objective is self-sufficiency. *Id.* Recently, the Iowa Supreme Court has recognized the concept of transitional alimony as part of rehabilitative alimony. *In re Marriage of Smith*, 573 N.W.2d 924, 926 (Iowa 1998). Reimbursement alimony is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other. *Id.* Traditional alimony allows payee to maintain a similar life style. *See In re Marriage of Weinberger*, 507 N.W.2d 733, 735 (Iowa App. 1993). It is payable for life or for so long as a dependent spouse is incapable of self-support. *Id.*

The circumstances of this case support an award of rehabilitative alimony in the amount ordered by the trial court. *See In re Marriage of Smith*, 573 N.W.2d at 926.

Shirley performed the majority of the child rearing and household tasks during the marriage. Although she worked minimally outside the home during the marriage, she did not begin to pursue a career in nursing until 1995. She is fifty years old and needs to start supporting herself. Her education will allow her to become self-supporting.

James argues Shirley does not need to further her education to obtain gainful employment as a nurse. Shirley's expert testified otherwise. She testified that for

nontraditional students like Shirley to compete for jobs, it was necessary for them to make up in education what they lacked in experience. She testified a Bachelor of Science Degree in Nursing (BSN) for a nurse near the age of fifty was a professional necessity and needed to her future job security. The trial court found Ms. Sanders' testimony credible.

Like the trial court, we find it is necessary for Shirley to further educate herself to compete in the field of nursing and gain self sufficiency through her employment. During the time she is completing work on her BSN, however, she needs James' support. For these reasons, the award of rehabilitative alimony for the limited time Shirley was in school receiving her BSN was appropriate. The alimony award of \$1000 helped Shirley make the transition from a dependent to a self-supporting spouse. Likewise, the requirement James pay one-half of Shirley's hospital and medical insurance while she was in school aided Shirley in reaching her goal of self-sufficiency. The trial court's alimony award was not excessive and is affirmed.

IV. Division of Property.

James contends the trial court erred in its division of the accelerated lump-sum payment on the HHS sales contract. The court concluded Shirley was entitled to one-half of the \$32,000 payment.

The partners to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Russell*, 473 N.W.2d 244, 246 (Iowa App. 1991). Iowa courts do not require an equal division or

percentage distribution. *Id.* The determining factor is what is fair and equitable in each circumstance. *Id.* The distribution of the property should be made in consideration of the criteria codified in Iowa Code section 598.21(1) (1991). *In re Marriage of Estlund*, 344 N.W.2d 276, 280 (Iowa App. 1983).

HHS was created and sold during the marriage. After filing for a divorce in May 1996, but prior to trial, James secured a lump-sum payment of \$32,000 from his sister on the HHS contract. Although James had assigned the installment contract to Shirley in 1993, he did not give Shirley any of the accelerated lump-sum payment he received from his sister.

James' argument he used the money to pay nearly \$14,800 of taxes due from receipt of past installment payments on the HHS contract¹ is not supported by the record. James' account of what happened to the lump-sum payment is confusing. At one point, James testified he opened a credit line account to borrow the money needed to pay the \$14,800 of taxes due after receipt of the HHS installment payments. He testified he paid off the account with a portion of the lump-sum payment he received from his sister. However, at the time of trial the balance on the account was approximately \$14,570. James then denied incurring \$14,570 of debt after paying off the credit line account.

¹ If \$14,800 of the lump-sum payment went toward the couple's tax liability, only \$16,700 would be left to divide between the parties. James testified he applied the remaining \$16,700 toward his 1996 estimated personal tax liability.

The trial court described James' explanation of how the debts arose, were paid off, and then "crept back up" as baffling. Appellate courts consistently recognize that factual disputes which depend heavily on the credibility of witnesses are best resolved by the trial court which has a better opportunity to evaluate credibility than the appellate court. *IBP, Inc. v. City of Council Bluffs*, 511 N.W.2d 413, 415 (Iowa App. 1993). We will not redetermine the credibility of the witnesses on appeal when the trial court's findings are supported by substantial evidence on the record. After evaluating the credibility of the witnesses, the trial court determined the equitable result was to award Shirley one-half of the lump-sum payment. Our review of the record leads to the same conclusion. The trial court's division of the HHS lump-sum payment is affirmed.

James argues the trial court erred in ordering him to pay the lease and exercise the purchase option on the vehicle awarded to Shirley. The distribution of property is made in consideration of the criteria codified in Iowa Code section 598.21(1) (1997).² In consideration of these factors, the court's ruling regarding the Grand Prix

²a. The length of the marriage.

b. The property brought to the marriage by each party.

c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.

d. The age and physical and emotional health of the parties.

e. The contribution by one party to the education, training or increased earning power of the other.

automobile, although unique, was equitable. This was a twenty-two year marriage. Shirley is fifty years old. The majority of her working years were spent contributing to homemaking and child rearing. She was always supportive of James when he was furthering his education in the medical field. At one point, for example, while earning his physician's assistant license, James lived away from home for nearly seven months. Shirley is now in the position where she needs to be self supporting. She can do this only through further education. Being a full-time student requires she be supported, to some extent, while she acquires her education. In light of Shirley's

f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

g. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of the children, or if the parties have joint legal custody, to the party having physical care of the children.

h. The amount and duration of an order granting support payments to either party pursuant to subsection 3 and whether the property division should be in lieu of such payments.

i. Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.

j. The tax consequences to each party.

k. Any written agreement made by the parties concerning property distribution.

l. The provisions of an antenuptial agreement.

m. Other factors the court may determine to be relevant in an individual case.
Iowa Code § 598.21(1) (1997).

situation and the fact Shirley's earning capacity will never rise to the level of James', the trial court's property distribution was equitable.

AFFIRMED.